

**REMARKS**

Applicant would like to thank the Examiner for the detailed Official Action provided, and for the indication that claims 1, 3-14 and 60 are allowed (although it appears that the Examiner has erroneously indicated that canceled claim 61 has been allowed, and not claim 60). Upon entry of the present Response, independent claim 62 will have been amended, and claims 2, 15-59 and 61 remain canceled without prejudice or disclaimer. In this regard, Applicant submits that no new matter is believed to have been presented by the above-made amendment. Accordingly, claims 1, 3-14, 60 and 62-70 are pending in the present application. Thus, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejections of the claims pending in the present application. Such action is respectfully requested and is now believed to be appropriate.

**Anticipation Rejections under 35 USC §102(b)**

The Examiner rejected claims 62 and 63 under 35 U.S.C. 102(b) as being anticipated by WATKIN (U.S. Pat. No. 3,797,076). Applicant respectfully traverses the anticipation rejections for the following reasons.

For an anticipation rejection under §102 to be proper, a single reference must disclose each and every element recited in a claim. Applicant respectfully asserts that WATKIN fails to disclose each and every element of at least amended independent claim 62.

In the Official Action, the Examiner asserts that WATKIN discloses each and every feature recited, including the “clip guide portions” and the “occlusion portions.” More specifically, the Examiner appears to assert that the lips 18, 20 of WATKIN correspond to the clip guide portions, as generally recited, and that upper and lower arms 12, 14 of WATKIN correspond to the occlusion portions, as generally recited. It also appears (although not explicitly

stated by the Examiner) that the Examiner asserts that gripping surfaces 18f, 20f correspond to the planar members of the clip guide portion that are parallel to one another when the occlusion portions are in engagement, as generally recited.

However, without acquiescing as to the propriety of the rejection, Applicant submits that WATKIN at least fails to disclose the clip guide portions, as generally recited in amended independent claim 62. More specifically, Applicant asserts that WATKIN fails to disclose a clip guide portion including a planar member having an engagement surface that extends from the occlusion portion to the wire end, as generally recited in amended independent claim 62. Applicant further submits that WATKIN fails to disclose engagement surfaces of planar members that are parallel to one another and coplanar with inner engaging surfaces of the occlusion portions when the occlusion portions are in engagement, as generally recited in amended independent claim 62.

In this regard, Applicant asserts that the gripping surfaces 18f, 20f are merely contact points provided at a proximal end of the lips 18, 20 and at a distal end of the arms 12, 14. That is, the gripping surfaces 18f, 20f do not extend from occlusion portions to wire ends, as generally recited in amended independent claim 62. Thus, Applicant asserts that WATKIN fails to anticipate the presently claimed invention.

However, should the Examiner consider the camming surfaces 18e, 20e of lips 18, 20 to be the engagement surfaces, as generally recited, rather than gripping surfaces 18f, 20f, Applicant submits that WATKIN additionally fails to disclose that the camming surfaces 18e, 20e are parallel to one another and coplanar with inner engaging surfaces of the occlusion portions, as generally recited. That is, Applicant submits that the camming surfaces 18e, 20e are not parallel to one another and not coplanar with the gripping teeth 24, 26 of the arms 12, 14 when the clip is

in the closed position. *See e.g.*, FIG. 2.

Instead, the camming surfaces 18e, 20e are clearly disposed at an angle  $\theta$  from one another, and not parallel to one another, to achieve a wide open orientation at mouth 17 for quick and easy clamping of an article. *See e.g.*, col. 3, lines 43-55; *see also* FIG. 2. Also, even when the article is clamped via gripping teeth 24, 26 and gripping surfaces 18f, 20f, the camming surfaces 18e, 20e remain at angle  $\theta$  from one another, and not coplanar with the gripping teeth 24, 26 and gripping surfaces 18f, 20f, so as to assure that the clip is readily removable from the article. *See e.g.*, col. 1, lines 63-67.

Thus, for at least the above-mentioned reasons, Applicant asserts that WATKIN fails to disclose the clip guide portion, as generally recited in amended independent claim 62. Therefore, absent a disclosure in a single reference of each and every element recited in a claim, a *prima facie* case of anticipation cannot be made under 35 U.S.C. § 102. Since WATKIN fails to disclose each and every element recited in independent claim 62, *i.e.*, the planar members of the clip guide portion, as generally recited, independent claim 62 is not anticipated thereby. Accordingly, the Examiner is respectfully requested to withdraw the rejection under 35 U.S.C. § 102.

With respect to dependent claims 63-70, at least because of their dependency, either directly or indirectly, from allowable independent claim 62, which is allowable for at least the reasons discussed *supra*, dependent claims 63-70 are also allowable for at least the reasons discussed *supra*. Further, all dependent claims set forth a further combination of elements neither disclosed nor rendered obvious by any of the references of record.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of each of the outstanding anticipation rejections together with an indication of the allowability of the

pending claims. Such action is respectfully requested and is now believe to be appropriate and proper.

**Obviousness Rejections under 35 USC §103(a)**

The Examiner has rejected claims 64 and 68-70 under 35 U.S.C. §103(a) as being unpatentable over WATKIN. The Examiner has also rejected claims 62-70 in view of FRANTZEN (U.S. Pat. No. 6,193,732) and WATKIN (although it appears the Examiner has erroneously indicated that the FRANTZEN reference is U.S. Pat. No. 3,193,732, and not U.S. Pat. No. 6,193,732). Applicant respectfully traverses the obviousness rejections and requests withdrawal of the rejections in view of the following remarks.

With respect to claims 64 and 68-70, and without acquiescing in the propriety of the Examiner's rejection, Applicant assert, as indicated above, that at least because claims 64 and 68-70 are dependent from allowable independent claim 62, which is allowable for at least the reasons discussed *supra*, claims 64 and 68-70 are also allowable for at least the reasons discussed *supra*. Further, all dependent claims set forth a further combination of elements neither disclosed nor rendered obvious by any of the references of record. Thus, for at least these reasons, Applicant asserts that WATKIN fails to disclose or render obvious the combination of features as generally recited in each of claims 64, 68, 69 and 70.

With respect to the Examiner's obviousness based rejection of independent claim 62 in view of FRANTZEN and WATKIN, Applicant respectfully asserts that FRANZTEN, either alone or in any proper combination with WATKIN, fails to disclose or render obvious the combination of features, as generally recited in amended independent claim 62.

In this regard, in the Official Action the Examiner admits, and Applicant agrees, that FRANTZEN at least fails to disclose the clip guide portion, as generally recited in independent

claim 62. *See e.g.*, Official Action of July 29, 2009 at page 5, lines 7-10. The Examiner then attempts to cure the deficiencies of FRANTZEN by introducing WATKIN, asserting that WATKIN discloses a clip guide portion, as generally recited. However, as discussed above with respect to the anticipation rejection in view of WATKIN, Applicant asserts that WATKIN fails to disclose the clip guide portion, as generally recited in amended independent claim 62. Thus, at least because the Examiner admits that FRANTZEN fails to disclose the clip guide portion, as generally recited, and because WATKIN fails to disclose the same (as asserted by Applicant above), Applicant asserts that neither FRANTZEN, nor WATKIN, either alone or in any proper combination with one another, disclose or render obvious the combination of features as generally recited in amended independent claim 62.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of each of the outstanding anticipation and obviousness rejections together with an indication of the allowability of all the claims pending in the present application, *i.e.*, claims 1, 3-14, 60 and 62-70. Such action is respectfully requested and is now believe to be appropriate and proper.

Applicant notes that the status of the present application is after final rejection and that once a final rejection has issued, an Applicant does not have a right to amend an application. Nevertheless, in the present situation, Applicant respectfully submits that entry of the present amendments are appropriate and proper and in full compliance with 37 C.F.R. § 1.116, since Applicants have merely amended independent claim 62 to enhance the clarity of the claimed clip guide portion. In this regard, Applicant notes that the additional features, *e.g.*, the engaging surfaces of the clip guide, have previously been considered by the Examiner in the claims as originally filed. Accordingly, Applicants respectfully assert that the present amendments raise no issues requiring further consideration or search, and thus should be entered by the Examiner.

**SUMMARY AND CONCLUSION**

Applicant asserts that the present application is in condition for allowance, and respectfully requests an indication to that effect. Applicant has argued the allowability of the claims and pointed out deficiencies of the applied references. Accordingly, reconsideration of the outstanding Official Action and allowance of the present application and all the claims therein are respectfully requested and is now believed to be appropriate.

Applicant notes that this amendment is being made to advance prosecution of the application to allowance, and should not be considered as surrendering equivalents of the territory between the claims prior to the present amendment and the amended claims. Further, no acquiescence as to the propriety of the Examiner's rejection is made by the present amendment. All other amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully Submitted,  
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